

Application No.: 10/801,523
Amendment and Response to Office Action dated March 9, 2006

REMARKS

The foregoing amendments and these remarks are responsive to the Office Action of March 9, 2006. Favorable reconsideration and allowance of the present application is respectfully requested in view of the foregoing amendments and these remarks.

The drawings are objected to because reference numbers for 71A-C and 160A-B shown in Fig. 7B were not included in the specification. The specification has been amended herein to overcome this objection. It is respectfully submitted that no new matter is added by these amendments.

The Office Action rejects claims 1-19, 21-24, and 28-41 as being indefinite. More specifically, the Office Action indicates that there is insufficient antecedent basis for the recitation of "the extension cut" in claims 1, 6, 11, 16, 22, 28, 31, 35, and 38. It is respectfully requested that the rejection of these claims be withdrawn, because claims 1, 6, 11, 16, 22, 28, 31, 35, and 38 have been amended in a manner that overcomes the indefiniteness rejection.

All of the claims are rejected as not being patentable over US 5,485,915 (Harris), in some cases in view of other references. The applicants do not hereby admit to the propriety of the claim rejections.

Independent claim 1 of the present application is rejected as being obvious in view of Harris. It is respectfully submitted that claim 1 is neither taught nor suggested by Harris. For example, amended claim 1 recites a wrap-around article carrier having, among other things, an inner flap with a secondary female opening formed by a secondary cut line having a center that is significantly further from the terminal edge of the inner flap than the rest of the cut line.

Harris discloses a wrap-around carrier 10 made from a blank 30 with bottom panel flaps 44, 46. The bottom panel flap 44 includes fold line 47 which extends the full length of the flap and which is interrupted by slits 48 forming primary male locking tabs 50. Secondary male locking tabs 52 are connected to the bottom panel flap 44 by the fold lines 47. Cutouts 56 in the bottom panel flap 46 include the primary female locking edges for engaging the primary male locking tabs 50. Slits 58 in the bottom panel flap 46 receive the secondary locking tabs 52. Slits 58 are straight and parallel to the terminal edge of the bottom panel flap 46.

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The applicants agree with the Office Action's acknowledgement that Harris does not teach all the elements of claim 1. On the other hand, the applicants respectfully disagree with the Office Action's indication that the shape of the secondary cut line is an obvious design choice in view of the teachings of Harris. In support of applicants' traversal, it is noted that MPEP 2143 indicates, with emphasis added, that:

[t]o establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure.

Furthermore, applicants note that it has been held that rejections based on choice of design are improper. *In re Bezombes*, 164 U.S.P.Q. 387, 391 (CCPA 1970). The Office must show some teaching or suggestion in the prior art that would motivate one skilled in the art to make the alleged choice of design. *Id.* Such motivation is clearly lacking in this case. As such, it is respectfully submitted that the Office Action failed to provide prima facie rejections for claim 1.

As acknowledged in the Office Action, Harris fails to show a secondary female opening formed by a secondary cut line having a center that is significantly further from the terminal edge of the inner flap than the rest of the cut line. In contrast to the present invention, Harris does not disclose a secondary locking system that allows the locking system (e.g., male locking tabs 50) to lie flat. Rather, the wrap-around carrier of Harris is known in the art to show a divider locking system wherein the locking tabs 52 are upwardly folded after insertion into the straight slits 58 so that the upwardly folded locking tabs are located between the two rows of containers. The straight slits 58 facilitate the upward folding of the locking tabs 50 after insertion into the corresponding openings.

The Office Action cites Fig. 2 and column 4, lines 30-38 of Harris to support the position that Harris discloses a secondary cut line that allows the locking system to lie flat and therefore it

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would be an obvious matter of design choice to modify Harris to have a secondary cut line with a center farther from the terminal edge. Applicants submit, no such showing or suggestion of a locking system that lies flat is taught by the cited portions of Harris or any other teaching of Harris. Fig. 2 of Harris shows an enlarged end view of an assembled carrier that shows the corresponding overlapped panels but does not show any portion of the locking system let alone the position of the locking tabs 50 after insertion into the slits 58. Moreover, the specification of Harris does not disclose the position of the locking tabs or suggest in any way that the locking tabs are arranged to lay flat after insertion into the openings.

The wrap-around carrier of the present invention improves over and is not obvious in view of the design in Harris in that the secondary cut line is shaped to facilitate the flatness of the locking tabs in the assembled carrier. The secondary cut line having a center that is significantly farther from the terminal edge of the flap than the rest of the cut line applies a downward force against the secondary male lock that assists in guiding the male lock into a flat position against the inside of the inner flap. Since the secondary male lock is positioned generally flat against the inside of the inner flap, it is not necessary for the male lock to be positioned between adjacent containers as in the design of Harris.

In view of the foregoing, it is respectfully submitted that each of the independent claims 1, 6, 11, 16, 22, 28, 31, 35, and 38 is allowable. It is further respectfully submitted that the dependent claims are allowable because of their respective dependence from allowable independent claims 1, 6, 11, 16, 22, 28, 31, 35, and 38, and because the dependent claims further patentably distinguish.

Furthermore, new dependent claims 42 and 43 further patentably distinguish over the prior art of record.

In view of the foregoing, it is respectfully submitted that the present application is in condition for immediate allowance, and such action is solicited. If for some reason the Examiner deems that the present application is not in condition for immediate allowance, it is respectfully requested that the Examiner telephone the undersigned at 704-849-2453, in an effort to expedite prosecution.

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The Commissioner is hereby authorized to charge any additional fees that may be required for the timely consideration of this Amendment under 37 C.F.R. §§ 1.16 and 1.17, or credit any overpayment, to Deposit Account No. 09-0528.

Respectfully submitted

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Date

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